

U.S. Patent Application No. 10/721,204  
Amendment dated March 3, 2005  
Response to Office Action dated December 8, 2004

### **REMARKS/ARGUMENTS**

Reconsideration and continued examination of the above-identified application are respectfully requested. By this amendment, claims 6, 7, 9, 13, and 14 are canceled as drawn to the non-elected invention. Claims 1-5, 11, 12, 16, and 17 have been amended. The amendments to the claims are editorial in nature and/or direct the invention to the elected invention. Claim 17 has been amended to recite the same compounds as set forth in originally filed claim 11. Accordingly, no questions of new matter should arise and entry of this amendment is respectfully requested.

#### **Objection to claims 1 - 7 and 18**

In the Office Action, claims 1 - 7 and 18 were objected to as containing non-elected subject matter. In particular, at page 4 of the Office Action, the Examiner alleged that claims 1 - 7 and 18 contain non-elected subject matter, particularly in the definition of variables  $R^2$  and  $R^3$  as forming a heterocycle or the definition of the ring A as being a heterocyclic ring. The Examiner suggested that the claims be amended to the scope of the elected subject matter as described by the Examiner on page 2 of the Office Action (compounds of formula (I) wherein X and Y are N, Z is C, A is a 6-membered ring containing 6 carbon atoms,  $R^2$  and  $R^3$  do not form a heterocycle and  $R^1$ ,  $R^4$ ,  $R^5$ , and  $R^6$  are as defined in claim 1).

In response, in order to further prosecution and secure an expedited allowance of the allowable claims, claims 6, 7, 9, 13, and 14 are canceled and claims 1 - 5 are amended so that they are drawn to compounds that the Examiner states are within the scope of the elected subject matter. In particular, independent claim 1 is drawn to compounds of formula (I) wherein X and Y are N, Z

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is C, A is a 6-membered ring containing 6 carbon atoms, R<sup>2</sup> and R<sup>3</sup> do not form a heterocycle and R<sup>1</sup>, R<sup>4</sup>, R<sup>5</sup> and R<sup>6</sup> are as defined in claim 1. Similarly, subject matter that the Examiner had characterized as non-elected is deleted from claims 2 - 5. Accordingly, claims 1 - 5 should be allowable. Further, claim 18, which is directed to a pharmaceutical composition comprising the compound of claim 1 and at least one carrier, should also be allowable, as well as method claims 8, 10, 11, 12, 15, 16, 17, and 19 which are directly or indirectly dependent on claim 1.

The amendments made herein do not constitute a concession of the correctness of the restriction that was made by the Examiner and are made only for the purpose of securing an immediate allowance of the claims that the Examiner has indicated are within the scope of the elected invention. Applicants reserve the right to traverse and petition any restriction made in any future divisional application directed to the subject matter that the Examiner has designated as non-elected.

#### **REQUEST FOR REJOINDER OF METHOD CLAIMS**

Claims 8, 10, 11, 12, 15 - 17, and 19 are method claims that depend from or otherwise include all of the limitations of the allowable compound claims. Appropriate amendments are made to claims 11, 12, 16, and 17 so that the compounds used in the method of these claims are of the same scope as the compounds of amended claims 1 - 5. Accordingly, method claims 8, 10, 11, 12, 15 - 17, and 19 should also be allowable along with compound claims 1 - 5 and composition claim 18. Rejoinder and allowance of claims 8, 10, 11, 12, 15 - 17, and 19 is therefore respectfully requested.

Here again, the amendments provide that the compounds used in the method of these

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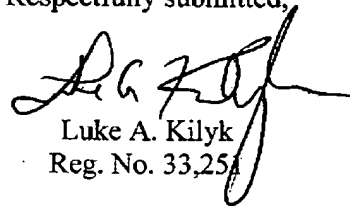
claims are of the same scope as the compounds of amended claims 1 - 5 and do not constitute a concession of the correctness of the restriction that was made by the Examiner and are made only for the purpose of securing an immediate allowance of the claims that the Examiner has indicated are within the scope of the elected invention. Applicants reserve the right to traverse and petition any restriction made in any future divisional application directed to the subject matter that the Examiner has designated as non-elected.

### CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests the reconsideration of this application and the examination and timely allowance of all of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,

  
Luke A. Kilyk  
Reg. No. 33,251

Atty. Docket No. 1966 (3010-003-01)  
KILYK & BOWERSOX, P.L.L.C.  
53 A East Lee Street  
Warrenton, VA 20186  
Tel.: (540) 428-1701  
Fax: (540) 428-1720